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OFFICE OF PETITIONS

HENRI DUONG
316 1/2 E GLENDON WAY
ALHAMBRA CA 91801

In re Application of :
Henri Duong :
Application No. 10/725,226 :
Filed: December 1, 2003 :
Title: Back Driving Automatic Brake :
System & Automatic Braking System
for Equipping in all Vehicles,
Airplanes, Ships, Etc. :
ON PETITION

This is a decision on the renewed petition to withdraw the holding of abandonment filed October 23, 2006, as well as the subsequent letter filed December 23, 2006.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.18`."

The above-identified application became abandoned for failure to timely file a **proper** reply to the final Office action mailed December 30, 2005. This Office action set a shortened statutory

period for reply of three (3) months. Applicant filed a response on January 23, 2006, but by Advisory Action mailed February 14, 2006, the Examiner advised Applicant that the response would not be entered because it failed to place the application in condition for allowance. Applicant filed another response on February 17, 2006, but once again this reply failed to place the application in condition for allowance. No further reply with an extension of time under 37 CFR 1.136(a) having been received, the above-identified application became abandoned on March 31, 20046 A Notice of Abandonment was mailed on August 7, 2006. Applicant filed a petition to withdraw the holding of abandonment on August 18, 2006, as well as a petition to revive under 37 CFR 1.137(a) on September 28, 2006. Both petitions were dismissed in a decision mailed on October 16, 2006.

On renewed petition, applicant argues that the February 14, 2006 Advisory Action instructed applicant to file an "amendment or affidavit". Applicant then argues that he filed a reply, namely an affidavit, on February 17, 2006.

Applicant is only partially correct with regard to what was stated in the February 14, 2006 Advisory Action. That Advisory Action did not merely require an "amendment or affidavit" to avoid abandonment of the application. More specifically, the Advisory Action required an "amendment, affidavit, or other evidence, **which places the application in condition for allowance**". Applicants replies filed January 23, 2006 and February 17, 2006 failed to place the application in condition for allowance.

37 CFR 1.135(b), the regulation relevant to the abandonment of this application, provides that (A) the admission of, or refusal to admit, any amendment after final rejection, or any related proceedings, will not operate to save the application from abandonment; and (B) the admission of, or refusal to admit, any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment. It is the applicant's responsibility to take the necessary action in an application under a final Office action to provide a complete reply under 37 CFR 1.113. 37 CFR 1.116 and 1.135(b) are manifest that proceedings concerning an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal.

Applicant should have ensured that the amendment had been entered or applicant should have filed either a Request for Continued Examination (RCE), continuing application, or Notice of Appeal. The last day an RCE, continuing application, or Notice of Appeal

could have been filed, with the maximum allowed three month extension of time, would have been June 30, 2006.

Applicant is recommended to promptly file a petition to revive under 37 CFR 1.137(b) - unintentional delay. Applicant's failure to promptly file this petition may be regarded as constituting intentional delay, and held to be an absolute bar to revival.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed (i.e. an RCE, continuing application, or Notice of Appeal); (2) the petition fee set forth in 37 CFR 1.17(m), currently \$750 for a small entity; (3) a **statement** that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571)273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-3207.



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